

REMARKS

Claims 1-20 are pending in the present application. Applicants respectfully request reconsideration of the claims in view of the following remarks.

I. CLAIM REJECTION – 35 U.S.C. § 103

A. Claims 1, 3-9 and 11-17

Claims 1, 3-9 and 11-17 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over U.S. Publication No. 2003/0027554 to Haumont (hereinafter “*Haumont*”) in view of U.S. Publication No. 2003/0037176 to Dannehr (hereinafter “*Dannehr*”).

The Examiner admits that *Haumont* does not teach accumulating a billable data count relating to a profile of a prepaid subscriber, as required by claim 1. As such, *Haumont* would also not teach transmitting the accumulated data count or providing the accumulated data count to the SCP, as also required in claim 1. In order to cure these deficiencies, the Examiner offers *Dannehr*. However, *Dannehr* was filed after the current application. *Dannehr* was filed on July 10, 2002, while the current application was filed December 26, 2001. Published applications are available as prior art under 35 U.S.C. § 102(e) (and, thus, 35 U.S.C. § 103(a)) if the application for patent, was published under section 122(b), by another, filed in the United States before the invention by the applicant for patent. 35 U.S.C. § 102(e)(1). Therefore, *Dannehr* is not proper prior art to the current application.

Dannehr claims priority to a foreign application, DE 101 334 72.9, filed July 10, 2001. However, in order for *Dannehr* to be available as prior art as of its foreign priority date, the foreign application to which *Dannehr* claims priority must: (1) have been filed after November 29, 2000; (2) designate the U.S. in its PCT filing; AND (3) have been published *in English* by WIPO under PCT Article 21(2). In the present instance, the foreign priority reference was filed after November 29, 2000. However, it was neither published in English by WIPO under PCT Article 21(2) nor did it designate the U.S. in a PCT filing. Therefore, the Examiner cannot apply *Dannehr* to any pending application that was filed prior to July 10, 2002.

Because the Examiner's rejections of claim 1 are critically based on *Dannehr* making up the deficiencies of *Haumont*, the rejection of claim 1 must fail. Accordingly, Applicant respectfully requests the Examiner to withdraw his rejection of claim 1.

In view of the inapplicability of *Dannehr* as "prior art" as a matter of law, there is no reason to address any aspect of the content of its disclosure.

Claims 3-9 and 11-17 depend from claim 1 and inherit all of the limitations of claim 1. Accordingly, claims 3-9 and 11-17 are allowable for at least the reasons discussed above. Applicant, therefore, respectfully requests that the rejections of claims 3-9 and 11-17 likewise be withdrawn.

B. Claims 2, 10, and 20

Claims 2, 10, and 20 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over *Haumont* in view of *Dannehr* as shown above in further view of Official Notice.

As noted above, *Dannehr* post-dates the current application, and is, therefore, not proper prior art. Accordingly, claims 2, 10, and 20 are allowable for at least the reasons discussed above. Applicant, therefore, respectfully requests that the rejections of claims 2, 10, and 20 likewise be withdrawn.

C. Claims 18 and 19

Claims 18 and 19 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over *Haumont* in view of *Dannehr* as shown above in further view of U.S. Patent No. 6,707,813 to Hasan, et al. (hereinafter "Hasan").

As noted above, *Dannehr* post-dates the current application, and is, therefore, not proper prior art. Accordingly, claims 18 and 19 are allowable for at least the reasons discussed above. Applicant, therefore, respectfully requests that the rejections of claims 18 and 19 likewise be withdrawn.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Thomas J. Meaney, Applicant's attorney, at 972-732-1001 so that such issues may be resolved as expeditiously as possible. No fee is believed due in connection with this filing. However, should one be deemed due, the Commissioner is hereby authorized to charge, or credit any overpayment, Deposit Account No. 50-1065.

Respectfully submitted,

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Date

Thomas J. Meaney
Thomas J. Meaney
Attorney for Applicants
Reg. No. 41,990

SLATER & MATSIL, L.L.P.
17950 Preston Rd., Suite 1000
Dallas, Texas 75252
Tel.: 972-732-1001
Fax: 972-732-9218